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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,865	03/10/2005	Robert E. Lo	23095	6670
535 7590 08/10/2007 K.F. ROSS P.C. 5683 RIVERDALE AVENUE SUITE 203 BOX 900 BRONX, NY 10471-0900			EXAMINER MCDONOUGH, JAMES E	
			ART UNIT 1755	PAPER NUMBER
			MAIL DATE 08/10/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/511,865

Applicant(s)

LO ET AL.

Examiner

James E. McDonough

Art Unit

1755

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See *Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 17-42.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

J. A. LORENZO
SUPERVISORY PATENT EXAMINER

Continuation of 3. NOTE: 1.) Applicants amendment substituting monopropellant for monergole raises new issues that require further search and consideration. 2.) Applicants argue that the open pore foam of the instant application is different from the metal sponge used by the reference, however the reference teaches that the difference between a sponge and a foam is whether the pores are connected or not, and since the pores of both the reference and the instant application are both open they have identical structure, although, applicants can be their own lexicographers and define terms as they see fit, they can not change the definition of terms from the reference. 3.) Applicants argue that explosives differ from rocket propellants, however, it is well known that many fuels and oxidizers can be used both in explosives and rocket propellants, the difference between the two is how the ignition is controlled, as for most composition to be explosive they require a detonator, and have the same thermodynamic parameters even though they may proceed with different reaction kinetics. 4.) Applicants argue against the Grosse reference, for not teaching all the limitations, examiner kindly request applicants to read the final or non-final rejection where it is stated that Grosse is used to show motivation for freezing a liquid to a solid, this and most of applicants arguments amount to piece meal analysis of the references, which, is prohibited. 5.) Applicants argue that their invention is not restricted to the proportion of fuel and oxidizer given by Grosse ranging from 0.1 to 50 mm, examiner would like to point out that proportions of ingredients in a composition can not be measured in terms of length, but must be measured in terms of percent, weight, moles, or volume. 6.) Applicants argue that the pore walls are thinner in their invention than in the references, however, applicants are arguing limitations not in the claims, and this is prohibited. 7.) Applicants admit that Keilbach teaches using liquid oxygen and hydrogen, but state that Keilbach does not teach any cryogenic components, examiner has already replied to this argument, applicants appear to be ignoring examiner remarks, but if liquid hydrogen and oxygen are not cryogenic, examiner ask what is cryogenic, are applicants trying to use a different definition than what is accepted for cryogen/cryogenic, because this would be improper, since the instant application is using liquid oxygen and so is the reference, examiner kindly request applicants to explain how liquid oxygen is cryogenic in the instant application but not in the references. 8.) Applicants state at the beginning of page 14 of their arguments that "This reference deals exclusively with liquid propellants", then in the next paragraph applicants state "Since this explosive is a liquid or gel (see col. 2, lines 33 to 46), application of this composition as a rocket propellant must be entirely excluded", examiner ask if liquids must be entirely excluded from a rocket propellant, how do applicants a.) plan to use a liquid as a rocket propellant and b.) admit that the reference teaches liquid propellants, but then state that liquids can not be used, contrary to what is stated in the references themselves, applicants are reminded that all patents are considered valid. 9.) Applicants argue that "just because Krivohlavek refers to explosives in terms of emulsions, does not mean that emulsions of cryogenic monergoles can be considered as rocket propellants at all.", however, applicants submit no evidence or teaching that a emulsion of cryogenic monergoles can not be used as rocket propellants. 10.) Applicants start to mention examiners question about how the composition of the reference would shrink but the instant invention would not, but then state that the reference of Grosse is irrelevant to the shrink hole formation, however examiner would like to point out that Grosse is the reference that teaches freezing to a solid, so it indeed is relevant to thermal contraction/shrinking contrary to applicants assertion that it is not relevant, applicants are continuing to ignore examiners questions and remarks, as they do not state how their invention gets around shrink hole formation, just that the reference is not relevant, examiner would like to also point out that applicants initially raised the issue of shrink hole formation and that it would not happen in their invention, but appear not able to provide any evidence to support their argument. 11.) Applicants argue that explosives and rocket propellant are not interchangeable, this is not persuasive because as stated above explosive and propellant compositions are disclosed in many patents as being used interchangeably and the only difference between the two is the use/non-use of detonators and the structural arrangement of the components, but not the compositions themselves and applicants are reminded that the claims are to composition claims. 12.) The remaining arguments amount to either piece meal analysis of the reference or arguing limitations not from the claims, neither of which is proper nor do they add to the patentability of the claims, for these above reasons all arguments are considered to be unpersuasive, and the rejections are therefore, maintained.